Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications Inc., Transferee	)))))	CC Docket No. 98-141

COMMENTS OF MCI WORLDCOM, INC. CONCERNING POSSIBLE CONDITIONS

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EXECUTIVE SUMMARY

The set of conditions that SBC and Ameritech have proposed to win Commission approval of their proposed transfer of control is a bad deal — for the Commission faced with the prospect of trying to enforce a complex group of regulatory conditions, for competitors trying to break into SBC and Ameritech's monopoly local markets, and most importantly for the consumers who would be hurt by the reduction in competition that consummation of the merger would cause. MCI WORLDCOM, Inc. ("MCI WorldCom") demonstrated in its earlier comments in this proceeding that the proposed merger of SBC and Ameritech would harm the public interest because it would reduce local competition and threaten Internet and long distance competition. SBC and Ameritech's proposed conditions ironically demonstrate that no set of conditions can, as a practical matter, ensure that the prospects for local competition are enhanced and that competition for Internet services is preserved if the two companies merge. The Commission should simply deny the application, without prejudice to reapplication when SBC and Ameritech have complied with the market-opening requirements of the Telecommunications Act of 1996 and effective local competition has developed.

The fundamental problem is that the proposed merger would inflict serious harm to competition without any offsetting public interest benefits, so the entire justification for merger approval depends on the effectiveness and success of the conditions. This is not a merger that is fundamentally procompetitive or even competitively neutral except for specific, limited aspects where conditions can ameliorate potential harm. This is a fundamentally, intrinsically anticompetitive merger with little or no redeeming value. Behavioral conditions in general, and certainly those proposed by the merger parties, simply cannot carry the weight that they need to bear in the context of the SBC/Ameritech merger.

The merger would threaten the major public policy objective of the Telecommunications Act of 1996 — maximum and rapid development of competition in the local markets that SBC, Ameritech, and other incumbent local exchange carriers still monopolize. The effects, if not the intent, of the proposed merger would be to raise the barriers to local competition within SBC's and Ameritech's regions, to reduce the ability of regulators and competitors to benchmark the performance of SBC and Ameritech, and to eliminate both potential and nascent actual competition between two companies.

While the merger presents a tremendous downside, it offers no upside. SBC and Ameritech claim that Commission approval of their merger would cause them to increase local competition by entering local markets outside their regions, but SBC and Ameritech are each already large enough, rich enough, and experienced enough to pursue an out-of-region strategy on its own if it is in each company's interests to do so. Conversely, if SBC and Ameritech would not find it in their overall economic interests to compete out-of-region without the merger (and to date they have not competed in out-of-region local markets on any significant scale), they will not compete out-of-region even if they merge. Appropriate skepticism about the sincerity of SBC and Ameritech's professed intentions is reflected in the staff's conclusion that conditions are needed to ensure that SBC and Ameritech carry out their promises in their "National Local" strategy — although the minimal nature of the out-of-region requirements indicates that any benefits would be insubstantial.

For these reasons, the proposed merger of SBC and Ameritech would advance the public interest, and the Commission can approve it, only if conditions imposed by the Commission generate public interest benefits that the Commission is confident will be major enough to outweigh the substantial harms that the merger will produce. The Commission staff is correct that the merger should not be approved unless substantial, effective, and enforceable conditions prevent any reduction in the growth of competition.

Unfortunately, the conditions proposed by SBC and Ameritech do not come close to meeting this test. Indeed, they do not satisfy the standard that SBC and Ameritech committed to meet when they proposed the conditions: that comprehensive conditions "will bring immediate and substantial benefits to the public" and that they are "self-executing." SBC and Ameritech propose conditions that are largely meaningless because they do not require SBC and Ameritech to do enough to open their local markets to competition, and because they are not enforceable as a practical matter:

- The proposal would allow SBC and Ameritech to complete their merger *before* they satisfy the conditions, thereby eliminating a major incentive to comply and virtually assuring non-compliance. Allowing SBC and Ameritech to merge first and comply later is a recipe for defiance and delay.
- Several conditions addressing issues as vital as collocation, unbundled network elements, and pricing require only that SBC/Ameritech obey the law, in effect rewarding their on-going failure to live up to their legal obligations.
- The proposed enforcement mechanism is undefined and protracted, and remedies for non-compliance are inadequate.
- Many of the conditions are insufficient, vague, and skewed in favor of SBC/Ameritech.

As a result, attempted enforcement of these conditions would mire the Commission in numerous resource-intensive proceedings. Experience with the Bell Atlantic/NYNEX merger conditions and other procompetitive Commission rules indicates that full compliance will be achieved, if at all, only after enormous delays and costs.

One straightforward approach that would solve many, if not most, of these problems would be to condition closing of the merger on the grant to SBC and Ameritech of in-region interLATA authority pursuant to section 271, as several state attorneys general have recommended. However, the best way to ensure that local competition continues to develop unimpeded by the merger, and that Internet and long-distance competition are preserved, is for the Commission to deny the pending applications. At an absolute minimum, the Commission should greatly strengthen the conditions in the ways explained in these comments.

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COMMENTS OF MCI WORLDCOM, INC.
CONCERNING POSSIBLE CONDITIONS

MCI WORLDCOM, Inc. ("MCI WorldCom") hereby submits its comments concerning the set of conditions that SBC and Ameritech have proposed to win approval of the proposed transfer of control and to which the Commission staff has reportedly agreed. For the reasons stated here and in MCI WorldCom's initial and reply comments in this proceeding, the proposed merger of SBC and Ameritech would cause substantial harms to the public interest, and no set of conditions can be substantial, effective, and enforceable enough to offset these harms. The Commission should therefore deny the applications. If, however, the Commission decides to grant conditional approval to the merger, the conditions should be substantially more stringent than those proposed by SBC and Ameritech, and the Commission should require them to satisfy these conditions *before* they close.

ANALYTICAL FRAMEWORK

SBC and Ameritech bear the burden to persuade the Commission that the benefits of their proposed merger exceed the costs so that it affirmatively advance the public interest. As MCI WorldCom previously demonstrated, this fundamentally anticompetitive merger as proposed would cause serious harms to competition without any offsetting public interest benefits. A merger that otherwise fails the Commission's cost-benefit test may be approved if conditions reduce the costs, or increase the benefits, enough to make the merger as a whole beneficial. Those conditions may take two forms. Structural conditions like divestiture change the ability and incentive of the merging firms to impede competition and are therefore self-enforcing, requiring no post-implementation enforcement. Behavioral conditions attempt to require or prohibit conduct contrary to the merged firm's unfettered economic self-interest, and because the firm has affirmative incentives *not* to comply with conditions that modify profit-maximizing behavior, they require continuing regulatory enforcement.

Of course, conditions can have their intended result only if the merged firm complies with them. Effective conditions must satisfy two requirements: first, the agency must be able to determine whether or not the firm achieves compliance; and second, the costs of non-compliance to the merged firm must exceed the benefits of non-compliance. In evaluating the potential benefit of a condition, the Commission should consider the likelihood of evasion, and the cost and time to complete enforcement proceedings and impose costs for non-compliance. The more a firm believes it can avoid or delay compliance, the greater the likelihood of non-compliance, and the greater the costs that the agency must impose on non-compliance in order to incent compliance. Equally important, if the likely anticompetitive effects of the merger are great, the agency must be confident that the conditions will be truly effective in producing major procompetitive benefits sufficient to offset the harms.[1]

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[1] A direct analogy lies in the treatment of efficiencies in the Horizontal Merger Guidelines of the Department of Justice and Federal Trade Commission, which this Commission has considered. *See In the Matter of Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc., Memorandum*

One way to increase the likelihood of compliance, and reduce the cost to the public of non-compliance, is to require that the firms satisfy the conditions *before* they merge. First, to the extent that the merger will help the firm to compete more effectively, pre-conditions give the merging firms a strong incentive to bring themselves into compliance because the firms' self-interest will cause them to satisfy the conditions. Second, it is generally easier for the Commission to determine compliance than to coerce it, and it is often easier to deter and remedy back-sliding from conditions with which a firm has complied than to force the firm to comply in the first place, especially if the merged firm may invalidly claim that, for example, compliance has turned out to be technically infeasible or delays are due to lack of cooperation from other firms. With pre-conditions, the agency need determine only whether the firm has complied and monitor future performance to ensure continued conformity.

If the firm does not comply, the agency need not worry about misbehavior enabled by the merger because the merger simply will not occur. Except to the extent that the firm can cease to comply with impunity, pre-conditions eliminate the downside of the merger: the costs resulting from the merger are avoided if the companies cannot merge without full implementation of the conditions that generate offsetting benefits. If, however, the firm does not have to comply with the conditions until after closing, determining whether the firm complies with the conditions is only the start of the process. If the firm is not willing to do pre-closing what it needs to do to comply, that only proves that the conditions are essential because the costs to the firms of compliance in terms of lost monopoly profits exceed the benefits of the merger. Nor is undoing a

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Opinion and Order, CC Docket No. 97-211, ¶ 194 (released Sept. 14, 1998). Section 4 provides, "The greater the potential adverse competitive effect of a merger . . . the greater must be cognizable efficiencies in order for the Agency to conclude that the merger will not have an anticompetitive effect in the relevant market. When the potential adverse competitive effect of a merger is likely to be particularly large, extraordinarily great cognizable efficiencies would be necessary to prevent the merger from being anticompetitive." Moreover, note 37 of this section states, "[d]elayed consumer benefits from efficiencies . . . will be given less weight because they are less proximate and difficult to predict." *See 1992 Horizontal Merger Guidelines*, 57 Fed. Reg. at 41558, ¶ 4.0. What is true for benefits from efficiencies is equally true for alleged benefits from conditions.

completed merger if conditions turn out to be unenforceable a good option because reversing a merger is at best a difficult task after the operations and assets of the two firms have been integrated.

In the context of ILEC mergers that would reduce local competition, the financial consequences to the ILECs of non-compliance with merger conditions must be very substantial to induce compliance. The purpose of behavioral conditions is to decrease significantly the monopoly power of the merged firms, so full compliance means substantial loss of monopoly power and monopoly profits. The strength of the incentive to avoid compliance is illustrated by the fact that no Bell operating company has yet to fully implement the market-opening competitive checklist in section 271 in order to enter the in-region interLATA business.

It is simply not realistic to expect full and timely compliance by incumbent monopolists with complex interrelated market-opening conditions. The painfully slow development of local competition over the last three years teaches that enforcement of regulatory requirements against an unwilling monopolist is enormously difficult. Experience with the Bell Atlantic/NYNEX merger conditions provides a sobering lesson about the danger of relying on promises made only to secure merger approval: Bell Atlantic has engaged in nearly two years of delay and strategic non-compliance, and its conduct has become more brazen as the sunset date for the conditions approaches.[2] SBC's recent violations of section 271, the Commission's rules, and its undertakings to the Commission in connection with its acquisition of Southern New England Telephone Company provide further confirmation that it is better for the parties to "fix it first" than to trust their promises to do in the future what they will not do today.[3]

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[2] To date, MCI WorldCom has filed 3 complaints against Bell Atlantic, seeking enforcement of the Bell Atlantic/NYNEX merger conditions. *See MCIMetro Access Transmission Services, Inc. v. Bell Atlantic Corp*., File No. E-98-12, filed December 19, 1997; *MCI Telecommunications Corp. and MCIMetro Access Transmissions Services, Inc. v. Bell Atlantic Corp. et al.*, File No. E-98-32, filed March 17, 1998. MCI *WorldCom, Inc. and AT&T Corp. v. Bell Atlantic Corp.*, filed June 30, 1999.

[3] *In the Matter of SBC Communications Inc*., Order (FCC No. 99-153, rel. June 28, 1999).

Moreover, enforcing behavioral conditions intended to make carriers act contrary to their economic self-interest requires the Commission to regulate the operations of the merged company, consuming resources that could otherwise be devoted to the myriad priorities facing the Commission.

For all these reasons, SBC and Ameritech bear a heavy burden to convince the Commission that (1) the procompetitive benefits generated by the conditions will be great enough to outweigh both the substantial anticompetitive harms and the considerable cost to the Commission of long-term enforcement responsibilities, and (2) full compliance can realistically be expected because the cost to SBC and Ameritech of non-compliance imposed by self-executing or Commission-executed remedies will exceed the cost of compliance in lost monopoly profits. The merger parties must provide a record that strongly supports, if not compels, a finding that the alleged benefits generated by the proposed conditions in in-region and out-of-region local markets will be large enough, and certain enough, to outweigh the costs that the merger would otherwise inflict on the public interest.

GENERAL CONCERNS

Several overarching concerns apply to virtually all of SBC and Ameritech's proposed conditions.

Pre-Conditions. First and foremost, all of the conditions should be pre-conditions — SBC and Ameritech should be required to prove to the Commission's satisfaction that they have met all of the conditions *before* they transfer control of any licenses. The proposal relies exclusively on behavioral (versus structural) conditions that seek to constrain anticompetitive conduct through specific requirements or prohibitions on SBC and Ameritech's conduct and with which SBC and Ameritech have strong incentives not to comply. As explained above, pre-conditions are superior, both because they provide a substantial incentive for compliance, and because it is easier to determine whether SBC and Ameritech has in fact complied with conditions than to force compliance if they do not achieve it on their own. SBC and Ameritech's insistence that their proposed merger is critical to their very survival suggests that they will have a strong incentive to comply with conditions that must be satisfied before the merger occurs. That incentive will, by definition, be lost after the closing. Pre-conditions are not a panacea because some post-closing oversight is needed to prevent any back-sliding. However, it would be substantially easier for the Commission to enforce conditions requiring SBC and Ameritech to continue levels of performance they have already demonstrated they can meet (including through use of self-executing remedies) than to enforce conditions requiring SBC/Ameritech to cooperate on a timely basis with their competitors in the design and development of complex systems or the formulation of cost-based prices.

Allowing SBC and Ameritech to merge first and comply later is a recipe for defiance and delay. It would not only prevent achievement of the purpose of the conditions — generating local competition that would otherwise be prevented by the merger — but impose even greater burdens on the Commission to police and enforce conditions that the merged entity will have compelling incentives to frustrate and evade. Indeed, one might reasonably ask why SBC and Ameritech would agree to conditions if they actually expected that their version of implementation would substantially increase the effectiveness of competition against them in their monopoly local markets.

Section 271 Approval. One simple and effective approach to these problems would be to permit SBC and Ameritech to transfer control only when they have obtained authority pursuant to section 271 to provide interLATA service in at least a majority of their in-region states. Several state attorneys general have advocated this procedure.[4] It would (i) ensure that SBC and Ameritech have fully implemented critical steps to open their local markets to competition, thereby reducing all of the risks posed by the merger, (ii) enhance SBC's and Ameritech's current incentives to take these steps, (iii) avoid placing additional regulatory burdens on the Commission, (iv) maintain the division of responsibility between the Commission and state commissions

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[4]Comments of the Attorneys General of Indiana, Michigan, Missouri and Wisconsin (dated April 26, 1999).

statutorily prescribed in section 271 to oversee compliance with basic market-opening requirements, and (v) accommodate SBC's and Ameritech's legitimate interests because they themselves assert that they need section 271 authority to implement their "National Local" strategy through the merger.

Obeying the Law. The merger should not be approved without stringent conditions (and indeed it should not be approved at all) because it will reduce competition in markets for local, Internet, and long-distance services. These threats to competition exist because SBC and Ameritech's non-compliance with the requirements of the 1996 Act and the Commission's implementing regulations has enabled them to preserve their local bottleneck largely intact. It would be an affront to the Commission's authority to reward these companies for their intransigence by approving their application based on a promise to comply — at some time in the future — with the legal requirements they have flouted for so long.

Yet that is what some of the proposed core conditions would do. As explained in more detail below, the collocation, unbundled network element ("UNE"), and pricing conditions do little more than require SBC and Ameritech to obey existing federal and state regulations. That is true even though SBC and Ameritech have an atrocious track record in providing collocation and UNEs on reasonable and nondiscriminatory terms, including cost-based rates. Their continuing violations of these statutory and regulatory requirements cripple facilities-based competition because facilities-based competitive local exchange carriers ("CLECs") cannot address the broader local market, in particular residential and small business customers, without full implementation of existing collocation, unbundling, and pricing requirements.

It should go without saying that conditions that merely track existing legal requirements provide no basis for approval of the merger, but apparently SBC and Ameritech do not grasp this truism. The merger creates new threats to competition that would not otherwise exist, and new requirements are needed to address them. SBC and Ameritech cannot properly claim compliance with existing law as a benefit that would not be realized without the merger. If SBC and

Ameritech cannot be counted on to comply on a timely basis with applicable legal requirements if they do not merge, they lack the character qualifications necessary for merger approval.

FCC Enforcement. If the Commission does not insist on pre-conditions that must be satisfied before closing, the Commission should prepare to devote substantial resources to the enforcement of these conditions. As discussed above, if they are to achieve their purpose of ameliorating the merger's anticompetitive effects, behavioral conditions that need be satisfied only at some time in the future have the inevitable effect of placing a major enforcement burden on the Commission. This responsibility cannot be shunted to state commissions, which did not adopt these conditions and which already have large responsibilities under both the 1996 Act and procompetitive state laws. To make these conditions work, the Commission should commit to resolving complaints on a prompt, expedited basis, and to imposing substantial financial consequences for non-compliance. The allocation of authority between this Commission and state commissions should be clear in order to avoid jurisdictional uncertainty that will delay resolution of complaints on the merits.

Duration of Conditions. The conditions must remain in place as long as necessary to serve their intended purpose. At this relatively early stage in the development of local competition, the Commission cannot reasonably pick a date on which the conditions should sunset. That decision should be made based on the actual evolution of competitive conditions in the local marketplace. Picking an arbitrary termination date now will inevitably cause the conditions to end too soon or too late. Instead, the Commission should periodically review the continuing need for the conditions, with the burden on SBC/Ameritech to demonstrate that the conditions have in fact outlived their usefulness. Interested parties should have a full opportunity to comment on the extent of past compliance and the need for continuing the conditions.

Internet Competition. MCI WorldCom demonstrated that the proposed merger of SBC and Ameritech, especially in combination with the proposed merger of Bell Atlantic and GTE, would jeopardize competition to provide Internet services by expanding bottleneck control over high-speed Internet access. None of the proposed conditions addresses the threat to Internet competition if this merger is allowed to proceed. The merger would enhance SBC and Ameritech's ability to leverage their monopoly control over xDSL services into the Internet. The best solution to this problem is not an array of complex conditions that would regulate SBC and Ameritech's conduct relating to the Internet, but denial of the applications.

Access Charges. The proposal utterly fails to address the issue of inflated access charges. The ability of both SBC and Ameritech to set access charges far in excess of cost demonstrates that effective competition in local telecommunications markets has not yet developed. As long as access charges remain inflated, incumbent local exchange carriers ("ILECs") like SBC and Ameritech will have an enormous advantage, especially if and when they gain authority to provide in-region interLATA services. Indeed, the fact that inflated access charges are not a real cost to SBC/Ameritech when it originates or terminates interLATA calls in-region makes it easier for SBC/Ameritech not to impose minimum monthly or flat-rate charges (*see* paragraph 59[5]). Moreover, SBC and Ameritech can be expected to argue that the Commission's determination that calls to Internet service providers ("ISPs") are generally interstate in nature buttresses their efforts to impose access charges on these calls. The risks posed by the merger would be substantially reduced if access charges were reduced, and grant of the applications should be conditioned on a reduction in access charges.

SPECIFIC CONCERNS

The following sections discuss each of the 25 conditions proposed by SBC and Ameritech.

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[5] Unless otherwise indicated, all cites to any "paragraph" is to the attachment entitled "Proposed Conditions for FCC Order Approving SBC/Ameritech Merger" to SBC and Ameritech's July 1, 1999, *ex parte* in this proceeding.

I. PERFORMANCE MEASURES AND REMEDIES

SBC and Ameritech's proposed plan for performance measures and remedies for non-compliance does not go nearly far enough. The criteria are incomplete and inadequate, and the purportedly self-executing remedies are insufficient. These inadequacies are especially dangerous because, despite SBC and Ameritech's assertion that the proposal would not supersede stronger state plans, Ameritech has already urged the Michigan commission to delay the existing deadline for implementation of more stringent measurements that Ameritech claims are "inconsistent" with the proposal to this Commission.[6] A strong, comprehensive, and effective plan is essential.

Incompleteness of Measures. SBC and Ameritech have proposed a measurements plan that includes only 20 performance criteria (paragraph 5 of Attachment A), omitting many critical functions and process which CLECs depend on SBC and Ameritech to provide efficiently, reliably, and nondiscriminatorily. SBC and Ameritech's proposal would leave CLECs without critical protection against inferior and discriminatory treatment. Other state commissions, including Texas, California, Michigan and Ohio, in addition to states outside SBC and Ameritech territories, have required many of the critical measurements SBC and Ameritech omitted from their proposal. Indeed, although the applicants state that this proposal is based on the SBC-SWBT measurements plan in Texas, the Texas plan has 121 measurements. In California, an administrative law judge recommended approval of 42 of the measures contained in a settlement agreement to which SBC's subsidiary Pacific Bell is a party, and the California commission is expected to act on this recommendation in August. SBC and Ameritech's proposal ignores critical business processes such as Operator Services, Directory Assistance and Directory Listings, and Database Updates. In other areas, such as Ordering and Provisioning, General OSS, Billing, and Collocations, SBC and Ameritech's offer of measurements is grossly inadequate.

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[6] Ameritech Michigan's Petition for Rehearing or Clarification, Case No. U-11830, *Ameritech Michigan's submission on performance measurements, benchmarks, and reporting in compliance with the October 2, 1998, Order in MPSC Case No. U-11654* (filed June 28, 1999).

Reports should be disaggregated for different services so that the viability of competition to provide all kinds of services is protected. Performance should be reported separately for POTS (residential and business), ISDN, Centrex, PBX (Analog and DID) Designed Services (DDS, DS1/ISDN PRI, DS-3, VGPL/DS0, Unbundled Network Element ("UNE") loops -- nondesigned and designed 2-wire Digital ISDN capable and Digital xDSL capable, 4-wire analog, assured, and digital capable/HDSL, UNE loop PBX, UNE Ports — designed and nondesigned, UNE dedicated transport (DS-1 and DS-3), UNE Platform, interconnection trunks, PNP, and projects involving more than 20 lines.

Inadequacy of Standards. An effective performance standards plan would be consistent with the Measurements and Performance Standards ("MPS") included as Attachment 1. The 20 performance measurements proposed by SBC and Ameritech are inadequate to ensure that the ILEC is providing CLECs with an effective and nondiscriminatory opportunity to compete. For example, a CLC should be notified promptly if an order is rejected, so the CLEC can quickly revise the order or find out why the ILEC is rejecting an order that used to go through. Likewise, if the ILEC cannot install facilities as expected, it should provide timely notice to the CLC so that arrangements may be made with the end user. These measures are included in the proposed California settlement but are missing from SBC and Ameritech's proposal to the Commission. Moreover, the standards contained in the SBC/Ameritech proposal are inadequate because they do not reflect the actual capability of SBC/Ameritech's OSS systems. Below are some highlights of the proposal's deficiencies.

- SBC/Ameritech benchmarks for electronic transactions are lax. For example, the return of Firm Order Confirmations is benchmarked at a 5 hours for POTS and UNE loop, regardless of processing method, while Pacific has stipulated to 10 minutes for fully electronic orders. *See* Proposed Measure ("P.M.") 1. The average response time for the return of CSRs with more than 31 lines benchmarked at 24 hours, even if electronic. P.M. 15.

- "Parity" under the SBC/Ameritech plan for missed due dates would compare CLEC orders against retail services that are not analogous. *See* P.M. 2a, 2b, 2c and 6.

- In some cases, the statistic to be reported under the proposal does not include *all* events, thereby omitting the variation between the service provided to the CLEC and the ILEC's retail branch with respect to the time to complete a CLEC's order versus a retail order (*see* P.M. 2.d), and the variation between time between close of billing cycle and transmission of a bill (P.M. 20.)

- In other cases, the measurement does not cover a process that CLECs have already experienced trouble, *e.g.*, the percentage of trouble reports within 10 days of installation is not reported for local number portability (LNP) (P.M. 3a, 3b, 3c), and percent of premature disconnects for coordinated cut-overs (P.M. 13),

- The proposed measurement of premature disconnections in the case of coordinated cut overs captures only one of the several steps in the process that can go wrong.

- The measurement does not cover new products that CLECs are trying to provide in competition with SBC and Ameritech, *e.g.*, percent installation completed within the stated interval is not reported for DSL and LNP (P.M. 4c.).

- The proposed exclusion of "lack of ILEC facilities" as a basis of missed due dates will hide the allocation of limited ILEC facilities to the ILEC. *See* P.M. 5a, 5b, 5c.

- The proposal's failure to disaggregate trouble reporting between loops and interconnection trunks, LNP, and NXX code openings means that CLECs and regulators have limited insight into the impact of repeated outages upon competition (*see* P.M. 9a, 9b, 9c, 11a, and 11b).

- While SBC's California Pacific plan measures the average time to restore all lines and trunks, SBC/Ameritech propose to measure the outage for interconnection trunks only, despite the potential customer impact of line outages. *See* P.M.12.

- Percent FOCs Received in X Hours (P.M. 1) measures only LSRs and excludes ASRs for services that CLECs use to provide local service to their customers. This measure also does not specify how to handle a null (empty) field or failure to receive a FOC.

- The proposal for FOCs does not require SBC and Ameritech to start the clock when a FOC is received. In Texas, MCI WorldCom found that SBC-SWBT delays putting its time-stamp on the FOC.

- SBC and Ameritech are proposing to exclude delay days for lack of facilities (P.M. 5a). However, to determine whether the ILEC is giving itself precedence over CLECs when facilities are limited, the Texas commission approved a measurement, with SBC-SWBT's agreement, for Percent Company Missed Due Dates Due to Lack of Facilities. Alternatively, the measure should include all missed days, including lack of facilities, in P.M. 5a.

- On the Mean Installation Interval (4a-c), SBC and Ameritech reasonably propose to exclude customer requested due dates greater than the standard interval since this would increase the overall interval. However, SBC and Ameritech should also exclude customer requested due dates *less* than the standard interval since CLECs pay extra to have the ILEC fulfill them on an expedited basis. Because SBC and Ameritech treat these orders differently, they should be excluded from this metric, unless CLECs can request faster times without extra costs, delays of other CLEC orders, or other adverse consequences.

- The start date for P.M. 6, Average Installation Interval - DSL, should be changed to the date of CLECs' request for DSL, not the date on which ILEC personnel return the loop qualification, which is within the ILEC's control and could be hours, days, or even weeks after the request. That is, SBC and Ameritech should include in the metric the time it takes for them to determine whether conditioning is needed.

- SBC and Ameritech should collect data for Average Response Time for Loop Make-Up Information (P.M. 7) consistent with its purpose. The clock should start when the CLEC requests the information and stop when the ILEC provides the information. In Texas, MCI WorldCom found that SBC-SWBT starts the clock only when it sends a request to the Outside Plant Engineer.

- Order Process Percent Flow Through (P.M. 16) includes only those orders which flow through the system as SBC and Ameritech have designed it (*i.e.*, MOG-Eligible orders). All orders should be included in this metric, whether or not SBC and Ameritech have yet to implement systems capable of handling them properly.

- Common Transport Trunk Blockage (P.M. 18) excludes high usage trunk groups, but they should be included in order to report blocking on all trunks, not just low or medium usage ones.

- SBC and Ameritech do not make clear whether data for P.M. 17 and 18 is gathered every day of the month (except weekends for P.M. 18) or only for one week out of the month. The data should be gathered for all days to ensure consistent performance, and not just adequate performance in the week selected by the ILEC as the "official study week."

The following six measurements provide examples of the great difference between what CLECs need to conduct their business on a competitive basis and what SBC-AIT are willing to offer: All of these metrics are reasonable and realistic. For example, dependability of OSS to 95% reliability during prime times for ordering and preordering is crucial to consumer acceptance of CLEC services, and other ILECs, such as Bell Atlantic, have committed to at least 99.5%. Similarly, setting the standard at less than 1% service disruptions for no more than 5 minutes is entirely reasonable for botched hot cuts because there are so many precautions the ILEC can follow to protect against any disruption whatsoever.

Measurement	MCI WorldCom Business Need	SBC-Ameritech Proposal
Completion Notice Interval	1 hour	1 day
Percent Premature Disconnects	<1% for no more than 5 minutes	2% for 10 minutes
OSS Availability	99.9% (allows 1 day in 365 to fail)	99% (allows 4 days in 365 to fail)
Trunk Blockage	1%	3%
Missed Collocation Dates	<2%	5%
Billing Timeliness	100% in 48 hours	95% in 6 days

All of the standards should be defined in terms of numerical levels, which need to be periodically reviewed and adjusted based on benchmark studies of reasonably analogous retail services or processes, and not be subject to "rolling" parity, as in paragraph 6 of Attachment A. CLECs are entitled to service under section 251(c) that is reasonable as well as nondiscriminatory. Reasonable standards of service should be adopted and defined in terms of absolute numerical levels, which need to be periodically reviewed to ensure fair service and reflect service improvements. The quality of service provided to CLECs should not vary just because the quality of SBC/Ameritech's retail service goes up and down. For example, MCI WorldCom should be able to tell a customer dependably when a line will be provisioned. The customer does not want to hear about a range of possibilities based on what SBC or Ameritech claim they provide to their retail customers from time to time.

Benchmarks When a standard is used to measure compliance with a performance yardstick, SBC/Ameritech should not use any statistical calculation in addition to a benchmark, as paragraph 3.a of Attachment A provides. Benchmarks are used to establish levels of acceptable

OSS performance when, due to a lack of retail analog, a statistical test for parity cannot be used. The benchmarks themselves constitute the standard of service; an occurrence of OSS service either met the standard or it did not. SBC and Ameritech's proposal "utilizes a standard statistical calculation for calculation of the z-value for benchmarks." Attachment A, paragraph 3.a. This methodology is flawed because the derivation of a z-statistic for CLEC occurrences will mask the individual results that are subject to the performance benchmark. An event either meets the benchmark, or it does not, and non-performance occurs each time the benchmark is missed. Moreover, the effect of using a statistical test on a benchmark is a small but significant reduction of approximately 1.7 percent in the benchmark, which already prescribes the appropriate level of service. For example, although the proposed standard requires a FOC for some business service to be returned 95% of the time in 24 hours, the nominal benchmark is deceiving — once SBC/Ameritech runs the z-test on the benchmark, the 95% now becomes 93.3%, allowing an additional 1.7% of the orders not to meet the benchmark.

Statistical Tests. As provided by paragraph 7 of Attachment A, the modified z-test is the appropriate statistically based test for determining whether parity exists. But the proposed formulas do not use the modified z-test in all cases. For measurements expressed as percentages or rates, SBC and Ameritech propose to use the standard z-test (pooled variance) should not be used for any measurements expressed as percentages or rates. By using the pooled variance, SBC and Ameritech are increasing its margin of error by including CLECs' likely more variable data in the comparison. If the CLEC variance is greater than the ILEC variance, the z-test will not properly detect differences in the means. The large CLEC variance will inflate the standard error of the difference making differences in the mean appear less significant. SBC and Ameritech should use the modified z-test for all parity measurements, whether they are expressed as a means, proportions, or rates.

Small Sample Sizes. For sample sizes of less than 30, permutation testing should be used. The alternatives presented by SBC and Ameritech under "Qualifications to use Z-test" heading have not been demonstrated to be methodologically sound. On the other hand, the theoretical validity of permutation testing is widely recognized as a valid means of addressing parity for small sample sizes. Since the process of permutation testing is relatively simple and easily verified, there is no reason to adopt the untested process shown as "Alternative 1."

Adjustment for Random Variation. SBC and Ameritech wrongly propose a forgiveness every month for a 5% chance of Type I errors (Non-Parity Falsely Detected). The k table was meant for analyzing overall compliance with the 1996 Act and not to excuse a limited level of inferior service received by CLECs each month. If a 95% confidence level is being used to determine z-scores (setting the z-score critical value at -1.645), then no k values should be used to exempt further poor performance by SBC/Ameritech, as paragraph 8.c of the proposed plan provides. At the 95% confidence level, CLECs run a greater risk of non-parity performance going undetected (Type II error) than the ILEC does of non-parity being falsely detected (Type I error). The risk of Type II errors at a 95% confidence level is nearly three times as great as the 5% risk of a Type I error.[1] In other words, the CLEC is much more likely than the ILEC to be harmed by random variation that produces inferior service without remedy.

For every number of non-compliant measurements, SBC and Ameritech's plan subtracts a number of measurements from those otherwise eligible for penalty payments as the "k value". But as explained above, the probability of risk to ILEC at the 95% confidence level is less than the probability of risk to CLEC that discrimination goes undetected, so it is not appropriate to attempt to protect SBC and Ameritech from the effects of random variation without likewise protecting CLECs. But SBC and Ameritech propose to do so. Their proposal overcompensates them because it guarantees a forgiveness each month. Random variation will occur over time, not on a monthly schedule. Moreover, the use of a 95% confidence level makes it highly unlikely that a Type I error will occur each month. This monthly tossing out of noncompliant measures, particularly since there are only 20 with limited disaggregation, is a form of insurance to

[1] Statement of AT&T statistician, Dr. Clark Mount-Campbell, February 1999, in California Public Utilities Commission Rulemaking 97-10-016 to determine performance monitoring for OSS of Pacific Bell and GTE California.

SBC/Ameritech that enables it to engage in discrimination each month without facing any consequences. Therefore, the k-value table should be excluded from calculating SBC/Ameritech's performance.[2]

Timing. SBC and Ameritech should each be required to implement all of performance standards and measures before they close on the merger, and in all SBC and Ameritech states, including Connecticut. If they are as close to compliance as they suggest they are, each of them can meet this deadline and spare the Commission in the compliance issues that would otherwise doubtless occur.

The self-executing remedies prescribed for non-compliance should be available as soon as the standards become effective. No justification exists for excusing SBC and Ameritech from these remedies for non-compliance for nine full months, and fifteen in Connecticut, as paragraph 2 would permit. This proposal would, without any grounds, leave CLECs without the prescribed remedy for non-compliance, and for a substantial period of time.

Inadequacy of Remedies. One of the primary problems with the remedy proposal is that the remedy amounts are far too low to discourage SBC/Ameritech from providing substandard service to CLECs. *See* Attachment A-4. In many cases, the $25, $75 or even $150 payment is less than a non-recurring or recurring charge that the CLEC must pay for the underlying service or element, as well as grossly inadequate to modify the ILEC's incentive to discriminate. Capping a measure at a specific dollar amount actually encourages SBC/Ameritech to deliver worse service because SBC/Ameritech knows that no matter how poor the performance is, it will only have to make one flat payment. Equally troublesome is the proposal to cap the amount of remedies any one CLEC can receive at 10 percent of the total. This could deny a remedy to CLECs that submit the most orders to SBC/Ameritech and that are harmed the most by SBC/Ameritech's discriminatory performance.

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[2]MCI WorldCom also would agree to an equal risk confidence level that sets the critical value at –1.04) to balance the chance of Type I and Type II errors equally at 15% each. *See* Attachment 2.

Accordingly, if the Commission retains this misguided hierarchy of remedies, the remedies should be increased to levels that will serve as full remedies and effective deterrents, not as a sale price for discrimination. For example, the remedy amounts should all be "per measurement" amounts and should be increased to at least $30,000 for High, $25,000 for Medium, and $15,000 for Low categories of remedies, depending on the measure. Per measurement remedies at these levels will provide an incentive for SBC and Ameritech to fix problems that are impeding CLECs' ramp-up. The pro-consumer way for SBC and Ameritech to limit the total payments is to meet their obligations and provide CLECs the quality of service to which they are entitled. Any artificial limits on remedies is particularly dangerous because chronic substandard performance may deter CLEC entry, enabling SBC/Ameritech to limit its exposure by engaging in more widespread discrimination.

In addition, the Commission should modify paragraph 8.b of the proposal to include in the "High" category both blocking performance on common/shared transport trunks (measurement 18) and OSS availability (measurement 14), so that CLECs will receive some compensation for the tangible and intangible harms caused by SBC/Ameritech's failure to meet these standards.[3] More generally, Attachment _ to these comments (MCI WorldCom and AT&T's joint proposal filed on June 2, 1999, as an *ex parte* with the Commission) describes a superior, and simpler, two-category structure with only two levels of remedies — Immediate Customer and Competition Affecting Measures ($30,000) and Lagging Customer and Competition Affecting Measures ($20,000).

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[3]The Commission has "emphasize[d] that the standard for negotiated enforcement mechanisms is 'to ensure compliance with each standard,' which may, in some cases, go beyond compensation for tangible economic harm." Memorandum, Opinion and Order, *In the Application of Nynex Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Nynex Corp and Its Subsidiaries*, 12 F.C.C.R. 19985, ¶ 194 (1997). Certainly Common Transport Trunk blockage and OSS Interface Availability measurements should not be completely exempt from liquidated damages. CLECs are harmed by trunk blockage or the inability to access OSS during scheduled hours of operation. SBC/Ameritech would not make the same assumption about its own retail operations. This exemption from performance penalty is another example of the illusory nature of the SBC/Ameritech OSS proposal.

SBC and Ameritech propose unexplained variations in designations over their three-year duration: in some instances, a measure is designated as Low in the first year and High in year two or three; in others, it is Medium for the first two years and then High in the third year. *See* Attachment A-3. The Commission must determine whether SBC and Ameritech's rationale for these variations is reasonable, with CLECs having an opportunity to comment after SBC and Ameritech explain their rationale. In addition, SBC and Ameritech should not pay less if they provide poor service to CLECs in the first year than in later years. This insufficient deterrence could be disastrous for CLECs as they try to build market share. CLECs' dependence on SBC/Ameritech may be less in the third year to the extent that CLECs will gradually build out their own facilities. However, any poor performance will still require a remedy since the CLEC is relying on the ILEC for that particular service. The Commission should specify payment amounts for all three years at the highest of the options.

At least equally important, the Commission should eliminate all monetary caps from the plan. The monthly, annual, and state caps are arbitrary. The Commission has no basis to determine at this time that SBC/Ameritech's level of compliance will be high enough to avoid triggering these remedies; if SBC/Ameritech's performance turns out to be worse, it should suffer the consequences. Additionally, caps create the wrong incentives for SBC/Ameritech: the cost of non-compliance must exceed the competitive benefits of non-compliance in order to induce SBC/Ameritech to choose compliance, and not to treat violation of the performance standards as a tolerable cost of doing business in a continued monopoly environment.

SBC and Ameritech is correct in acknowledging that long-term poor performance dictates that the remedies increase (Attachment A-4). However, remedies should increase not only for duration of misses but also for the magnitude of the miss. A ten-day miss should have a higher financial consequence than a one-day miss since the harm to the CLEC is indisputably much greater. A plan that calibrates the amount of the remedy to both the magnitude and the duration of the miss is included in Attachment 2 to these Comments (MCI WorldCom and AT&T's joint June 2 proposal to the Commission).

In addition, the plan should make clear that any damages, liquidated or otherwise, available under paragraph 8.a of Attachment A do not limit CLECs' ability to recover additional damages necessary to make them whole or to obtain equitable remedies, as the last sentence of paragraph 11 appears to do to the extent the proposal is incorporated into interconnection agreements. The proposal also would permit SBC and Ameritech to offset any remedies under their plan by remedies paid under presumably more rigorous state plans, but they do not explain how the offsets would apply; for example, no offset should be made for any remedy for non-compliance with a state requirement not established as a condition for merger approval.

Access Discrimination. SBC and Ameritech should also provide monthly reporting on special access and switched access service quality for CLECs and provide remedies for substandard performance. MCI WorldCom relies on use of access lines purchased through the interstate special access tariffs to provide local service and has seen deterioration in provisioning and repair performance for these services. By requiring reporting and remedies on the special and switched access services used for local service as well as access, the Commission can help deter and remedy all means of ILEC discrimination against current local and future long distance competitors.

Complete and Timely Performance Data. In addition to performance measurements and self-executing remedies, SBC/Ameritech must provide on a regular, timely basis accurate information about their performance. SBC and Ameritech should explain how they will collect the data. SBC-SWBT recently submitted its proposal for data collection flows in Texas, for example, which contains many problems. Proper data collection flow rules are needed to ensure that the measure captures everything that it intended to capture and that SBC/Ameritech's performance actually meets that standard. For this reason, the conditions should require SBC/Ameritech to provide data collection flows on each measure.

Process. CLECs should have input concerning any subsequent proposal by SBC/Ameritech to modify any performance criteria that the Commission has imposed as a merger condition. Paragraph 4 of Attachment A provides for no CLEC role. Because the measures are so critical to local competition, CLECs need to have a say concerning a plan intended to protect them from their supplier-competitor.

II. COLLOCATION

In paragraph 3, SBC and Ameritech generously agree to comply at some time with their existing legal obligations concerning collocation. Their agreement to obey the law provides no basis to approve the merger or support a finding that the conditions generate substantial public interest benefits that offset the reduction in competition caused by the merger in SBC and Ameritech's regions. No transfer of licenses should occur unless and until the Commission finds that SBC and Ameritech have fully implemented the Commission's collocation rules. Equally important, recurring and non-recurring changes for collocation must be reasonable and nondiscriminatory.

Similarly, paragraph 4 merely requires SBC and Ameritech to implement the Commission's rules using the two methods that would be required in any event — tariffs or amendments to interconnection agreements. Regrettably, however, SBC/Ameritech's ability to make unilateral changes in collocation policy through tariff changes is unrestricted, leaving CLECs at the mercy of SBC/Ameritech and their business plans subject to constant flux. No fixed date is required for compliance because paragraph 3 permits SBC and Ameritech to satisfy this condition at any time up to the closing. Indeed, the proposal would continue the glacial pace at which SBC and Ameritech have been proceeding by, for example, giving them two months to submit even preliminary audit requirements in paragraph 6.a. A number of state commissions are in the process of fixing some of the problems with SBC's and Ameritech's current collocation policies and practices, and the Commission should make clear that collocation-related conditions set only a floor and that state commissions are free to establish stricter requirements in any state proceedings.

The other portions of the collocation-related conditions lay out a procedure for an audit of SBC/Ameritech's compliance with the Commission's rules. MCI WorldCom has no objection to an audit, but the proposed audit will do little to ensure compliance. For example, SBC and

Ameritech can hand-pick the auditor. A company that had a substantial role in designing key systems and processes under review should not be permitted to conduct the audit, even if it was not "instrumental" in designing "substantially all" these systems and processes, because it has an obvious incentive to approve those systems and processes it helped to design. In addition, paragraph 6.d would permit, but not require, the auditor to contact CLECs, but it is impossible to imagine that any thorough and reliable audit could be conducted without hearing from the entities most directly affected. The condition should also clarify what collocation policies and practices will be audited because the periodic changes in those policies and practices that are bound to occur will give the auditor a moving target.

Moreover, the condition must provide for a Commission determination on a fixed, expeditious schedule about whether the auditor correctly found that SBC/Ameritech complied with the Commission's collocation rules, and no transfer of control should be permitted unless and until the Commission itself finds that SBC and Ameritech have complied. To that end, the procedure should give interested parties access to confidential information under an appropriate protective order so that the Commission can make an informed, balanced decision about whether the auditor's findings are correct.

If SBC and Ameritech are out of compliance with the Commission's rules, the condition should impose, to the extent practicable, substantial and automatic financial consequences. However, the difficulty in crafting appropriate self-executing remedies for some violations of that order makes it all the more important to require compliance as a pre-condition to the transfer of control. The incompleteness of the proposed performance measures and remedies for collocation (*see* Attachment 1) exacerbates the risk of non-compliance.

The collocation condition should specify that the procedures and any remedies for its violation are separate and independent for procedures for violation of the underlying collocation rules, so, for example, CLECs will have effective remedies for violation of the Commission's rules before the auditor's report is submitted ten months after closing (paragraph 6.e). The fact that audit will be "in lieu of any other audit" (paragraph 7) should not mean that this "remedy" is exclusive.

III. OSS: UNIFORM INTERFACES

MCI WorldCom agrees that it is vital for the conditions to ensure that SBC and Ameritech finally comply with their obligation to provide efficient, reliable, scalable, and nondiscriminatory Operations Support Systems ("OSS"). SBC and Ameritech have already violated the Commission's January 1, 1997 deadline for well over two years. Compliance with the Commission's requirements for OSS is essential to permit local competition to develop through the use of UNEs singly and in combination. Requiring SBC and Ameritech to provide uniform OSS interfaces throughout their regions is another important step that will lower barriers to entry, especially for regional and national CLECs like MCI WorldCom.

Unfortunately, the proposed OSS conditions do not meet their laudable objectives. SBC and Ameritech have too much time to comply, and the proposed requirements are inadequate, incomplete, and unnecessarily complicated. As structured, the proposal guarantees that the Commission will be embroiled in continuing efforts to bring SBC/Ameritech into compliance.

Rapid Implementation. SBC and Ameritech's proposal would mean that a minimum of 2 ½ years would pass before they comply with the uniformity requirements for application-to-application and graphical user interfaces in paragraphs 11 and 14: they give themselves five months after closing to submit a proposal in Phase 1; they allow one month for a workshop and arbitration of unresolved issues in Phase 2; and then they give themselves two full years for development and deployment in Phase 3. In fact, with their existing incentives, it is clear that Phase 2 would take much longer. Workshops or collaboratives under the auspices of state commissions have proven to be very useful in addressing design and business rules issues, and they have generally taken 6-12 months. It is realistic to expect that SBC and Ameritech would not agree to resolve all issues to CLECs' satisfaction in the workshop and that the subsequent arbitration will take at least six months.[4] As a result, it is likely that the condition will sunset at the end of its three-year term pursuant to paragraph 68 before SBC/Ameritech complies with it.

The condition therefore needs to be restructured to ensure that SBC and Ameritech comply within a reasonable time and remain in compliance for a reasonable time. The best approach would be to require full compliance with the uniform interface requirements before SBC and Ameritech may close.[5] At a minimum, the design and development process should be completed before closing, and the period for deployment after closing should be limited to eighteen months, not two years. SBC and Ameritech will have time to prepare for implementation, and they have the resources and expertise to accomplish deployment in a more reasonable time frame. The uniformity requirement should remain in effect until SBC and Ameritech demonstrate that it is no longer useful (*see* pages 63-64 below) or, at a minimum, for three years after SBC and Ameritech achieve full compliance.

Comprehensive Plan. The various plans required in paragraphs 8, 11.a, and 14.a should be consolidated into one comprehensive plan — that the Commission reviews and approves before any closing, as discussed above. Such a plan is the critical first step to ensure the development and implementation of the necessary interfaces in a timely and efficient manner, and to enable CLECs to plan efficiently and avoid waste of resources. In addition to the requirements of these paragraphs, the comprehensive plan should contain a change management process that will eliminate disruptions to CLECs due to unilateral OSS changes by SBC/Ameritech.

The requirement regarding the development of uniform application-to-application interfaces and graphical user interfaces ("GUI") in paragraph 11 should be combined with

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[4]These deadlines reflect a strong bias in favor of the proposal's authors. SBC and Ameritech get five months to develop a plan in Phase 1 (paragraphs 11.a and 14.a), but they give CLECs only one month to digest and analyze that plan and work through all of the issues in a single workshop for all SBC and Ameritech states.

[5]The rationale for giving SBC and Ameritech more time to comply with certain requirements in Nevada and Connecticut is not explained. SBC and Ameritech should bear a heavy burden of justification for exceptions that would defeat the basic goal of uniformity.

paragraph 14's requirement to develop business rules. Business rules are not separate from an interface; they are part of the interface. For pre-ordering, ordering, and provisioning, for instance, the business rules and EDI specifications are complementary pieces of the interfaces and should be developed and implemented as part of the same process.

More generally, and more fundamentally, the merger conditions must define the term "uniform" in this context. The Commission has already recognized the importance of uniform interfaces to local competition in its Bell Atlantic/NYNEX merger decision, noting that CLECs need uniform interfaces in order to develop, test, and implement interfaces in one state and use the same interfaces to move easily, without significant retesting or additional development, into other states.[6] Bell Atlantic has tried to take advantage of the absence of an explicit definition of "uniform" interfaces.[7] The electronic interfaces that handle transmissions between interfacing carriers need to be specified in a precise set of rules and implementation guidelines, including data models and associated specifications, and transport protocol and security protocol specifications.[8] In order for these interfaces to be uniform, all of these elements must be uniform. Otherwise, a CLEC will not be able to interact in the same way with any SBC or Ameritech ILEC, and the

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[6] *See* Memorandum, Opinion and Order, *In the Application of Nynex Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer Control of Nynex Corp and Its Subsidiaries*, 12 F.C.C.R. 19985, ¶¶13-14, 183, 195, 196 (1997).

[7] MCI WorldCom and AT&T filed a joint complaint against Bell Atlantic for its failure to offer uniform interfaces as required by the Bell Atlantic/NYNEX merger order, and the primary issue is the meaning of the term "uniform interfaces." *See MCI WorldCom, Inc. and AT&T Corp. v. Bell Atlantic Corp.* (filed June 30, 1999). As a result, the Commission is only now faced with defining "uniform interface," two years after approval of the merger and two years before the conditions sunset.

[8] Business rules include the nature and scope of the business transactions the interfacing parties conduct together, identifies what information must be exchanged, and identifies the syntax and permissible set of values associated with the exchanged information, so the information can be accepted and processed by the receiver. Data models provide the rules for translating the information conveyed into the agreed upon computer language for transmission across the interface. The transport and security protocols describe exactly how the transport vehicle will be configured to carry the transmissions.

basic purpose of the uniformity requirement will be defeated. For these reasons, the proposal should specifically define the term "uniform interfaces":[9]

> *Uniform interface* - A uniform interface must use precisely the same business rules, data formatting specifications, and transport and security specifications across the entire SBC and Ameritech regions, thereby enabling a CLEC to use an interface developed and implemented in one SBC and/or Ameritech state in every other SBC and Ameritech state.

In addition, the provisions of paragraph 12 relating to the SORD system (and equivalents) should be considered as part of OSS functionality and addressed in paragraph 11. Although paragraph 12 refers to "direct access" to SORD, SORD is a service ordering processing system involving the five primary required OSS functions. SORD should be treated as part of SBC and Ameritech's core obligation regarding OSS.

Payments for Non-Compliance. MCI WorldCom agrees that, as paragraphs 11.a, 11.c, 14.a, and 14.c provide, SBC and Ameritech should face self-executing financial consequences if they fail to comply with the deadlines for uniform OSS interfaces. This payment, however, needs

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[9]The Commission should also define the terms "industry standard interface" and "interface implementation" as MCI WorldCom included in its Proposed Pre-Conditions filed by *Ex Parte* Letter, May 6, 1999. These terms are defined as follows:

> *Industry standard interface* - An interface based on the ATIS industry standards must comply with the industry standards or guidelines. It must accommodate every industry standard field and valid value and must use only industry standard fields and valid values, except that the interface may deviate from the standards where necessary to provide CLECs with nondiscriminatory access to the relevant OSS function.
>
> *Interface Implementation* - An interface will be considered implemented only after it is proven by independent third-party testing and carrier-to-carrier testing to provide nondiscriminatory operational access to the relevant OSS function at commercial volumes of transactions, and to include a comprehensive and functioning change management process.

to be large enough that it will be more than just a "cost of business." The payment has to be sufficient to make the cost of non-compliance exceed the cost of compliance. A total exposure of $30,000,000 under paragraphs 11.c, 14.c, and 16.c(3) does not meet this standard. Compliant OSS is essential to permit CLECs to use UNEs to compete. Impeding the viability of UNE-based competition for all services, including DSL, would have enormous value to SBC/Ameritech by preserving their monopoly position and resulting huge monopoly profits.[10]

Accordingly, the Commission should establish a schedule of payments that it determines exceed the cost of compliance in present and future lost monopoly profits. One option would be for SBC and Ameritech to make a major up-front commitment, such as a performance bond of $500 million, before merger close to provided added assurance that the needed interfaces will be developed and deployed on time. If SBC and Ameritech fail to implement industry standard interfaces on a uniform basis throughout their regions or to meet any of the deadlines provided in this condition, SBC and Ameritech would forfeit the performance bond.

OSS Testing. OSS-related conditions should provide for independent third-party and carrier-to-carrier testing of the full spectrum of OSS functions. SBC/Ameritech's compliance with the entire OSS section of conditions should be verified by successful testing. This testing must show that SBC/Ameritech's interfaces and related back-end systems comply with the applicable standards and guidelines, that they are uniform across all regions, and that they support seamless (that is, without manual intervention) end-to-end interoperability for all five core OSS functions — pre-ordering, ordering, provisioning, billing, and maintenance and repair. This testing should be completed for a full range of business case scenarios, and at commercial volumes. Only through this testing can CLECs be assured that SBC/Ameritech has achieved the goals of operational nondiscrimination and uniformity.

[10]The bias of the proposal in SBC and Ameritech's favor is further illustrated by the fact that they can cut their exposure in half (from $20,000,000 to $10,000,000) by deploying uniform interfaces but not the uniform business rules that permit CLECs to get access to these interfaces on a truly uniform basis. SBC/Ameritech can defeat the purpose of the uniformity requirement by failing to implement either aspect of it.

The merger conditions should therefore be amended to include both testing by requesting carriers and independent testing by a third party. These two critical types of testing serve different purposes. Carrier-to-carrier testing requires that SBC and Ameritech engage in testing with a requesting carrier, no later than 30 days after the request, using commercial and non-commercial orders to ensure compatibility between the two carriers. Independent third-party testing of OSS systems requires that SBC and Ameritech engage in full spectrum, end-to-end testing of OSS functioning and processes. The independent third-party should be selected by the Commission with input from the relevant state commission, SBC and Ameritech, and CLECs. Testing would culminate in a report to the Commission, state commissions and interested parties. SBC and Ameritech should bear the cost of third-party testing.

Change Management. SBC/Ameritech does not need twelve months to implement a change management system. SBC and Ameritech are not starting from scratch. Many of the SBC and Ameritech states already have a change management process in place, some of which include effective features. An effective change management system is absolutely critical for CLECs trying to develop OSS systems in the local exchange market, especially in light of all of the work that needs to be done with respect to OSS interface changes and enhancements as indicated by these merger conditions. A change management process is necessary to prevent, or at least minimize, disruption of CLEC access to OSS during development and implementation and through a reasonable transition period.

The following minimum requirements should be included in a complete change management process:

- Establishment of an ILEC/CLEC collaborative forum with equal authority for "change issue" acceptance and prioritization by the SBC/Ameritech and CLECs;
- Successfully tested operational production baseline implementation with complete and accurate matching specifications;
- Proper notice and documentation from the ILEC of all issues proposed for change;
- Sufficient time for CLEC review, comment, and collaborative discussion with respect to each issue;

- A formal, recorded ILEC/CLEC collaborative decision to make and prioritize a change;

- Issuance of accurate and complete specifications for the OSS interface change by the ILEC with enough time for all parties to develop, implement, and test the change;

- Complete testing of the change, beginning with regression testing to ensure that no previously working functions have been disrupted by the change; and

- Accurate documentary revisions reflecting the change.

- Escalation procedures to address disputes that may arise between SBC/Ameritech and the CLECs.

Arbitration. The proposal allows SBC and Ameritech to limit the Commission's choice of subject matter experts to consult with the independent arbitrator to three firms hand-picked by SBC and Ameritech. Paragraphs 11.b, 14.b, and 16.c. This provision is unfairly skewed in SBC and Ameritech's favor. SBC and Ameritech's singling out of Telecordia, about whose independence substantial questions have been raised, only underscores the inappropriateness of allowing SBC and Ameritech to exercise more control over the process than other parties. As a matter of fairness, given the reliance that the arbitrator may place on the subject matter expert, all parties should have an equal opportunity to recommend such experts to the arbitrator and the Commission. The proposal should also explain the standard the Chief of the Common Carrier Bureau will use to determine whether submission of unresolved issues to consolidated binding arbitration is in the public interest

OSS for xDSL. Business process rules for xDSL (and some other services) have not been completely addressed and published by the Ordering and Billing Forum ("OBF"), and because of the rapid pace of technological change, the initial Process Improvement Plan Report of Record in paragraph 16.c(1) should include any business functionality under review but not yet published by ATIS which has been requested by CLECs in the collaborative. In addition, the access that SBC and Ameritech promises to provide for Datagate and Varigate is not adequate for CLEC purposes because it is good only for ADSL. Because it appears that SBC will mechanize ordering and pre-ordering for its own xDSL services in SWBT states, CLECs should have access to the same capabilities on a nondiscriminatory basis.[11]

IV. OSS: WAIVER OF CHARGES

MCI WorldCom agrees that neither SBC nor Ameritech should charge for the use of standard electronic interfaces for accessing OSS, as paragraph 18 provides. This proposed condition does not produce any significant public interest benefit because the charges of an efficient ILEC should be, at most, close to zero under TELRIC principles.

V. OSS: ASSISTANCE FOR SMALL CLECS

MCI WorldCom has no comment except to note that SBC and Ameritech's failure to provide adequate information and assistance to *all* CLECs, large and small, has been a serious problem.

[11] *See* Texas Public Utilitiy Commission Docket Nos. 20226, *Petition of Accelerated Connections, Inc. d/b/a ACI Corp. for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company,* and 20272, *Petition of DIECA Communications, Inc., d/b/a Covad Communications Company for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Southwestern Bell Telephone Company,* April 14, 1999, *Southwestern Bell DSL Methods and Procedures.*

VI. xDSL AND ADVANCED SERVICES DEPLOYMENT

SBC and Ameritech's proposed undertakings concerning advanced services deployment generally advance the same obstructionist position they have espoused in the past. Examination reveals that their promises are not magnanimous gestures to encourage competition, but at best small and doubtful steps that fail to solve the underlying problems that CLECs face in deploying advanced capabilities over ILEC loops. Indeed, it is not a stretch to conclude that SBC and Ameritech's promises are nothing more than a continuation of their long-term efforts to frustrate CLEC competition using advanced technologies.

Pre-Condition. Paragraph 21.b would give SBC/Ameritech almost two years after closing to provide loop pre-qualification information through non-discriminatory OSS in more than half of its states. If SBC and Ameritech were truly committed to meeting their existing obligation, they would complete deployment in substantially less time in the Ameritech states, Nevada, and Connecticut. In order to shorten that time and give SBC and Ameritech an incentive to live up to this commitment, full implementation of this OSS condition should be a pre-closing requirement for *all* SBC and Ameritech states. If it is not made a pre-condition, the Commission should establish an expedited process for resolving disputes, and establish sufficient self-executing remedies for failure to comply with the condition.

Moreover, SBC and Ameritech do not need twelve months after closing to comply with their commitment in paragraph 22 to provide nondiscriminatory, electronic pre-order Internet access to loop pre-qualification information for xDSL services. This substantial delay would give SBC/Ameritech a substantial head start and permit it to acquire significant market share with no threat of meaningful competition from CLECs. Here again, SBC and Ameritech should satisfy this commitment before closing — or face immediate, certain, and substantial financial consequences if this remains a condition that need not be satisfied until after closing.

Inadequate Information. SBC and Ameritech need to provide more information so that CLECs can compete effectively to provide DSL services. The meager information SBC and Ameritech offer to provide for loop pre-qualification is woefully insufficient for the deployment of broadband services. The information that SBC and Ameritech propose to provide may not give MCI WorldCom and other CLECs sufficient information about a loop to specify the class of service it could deploy. CLECs depend on the completeness, as well as the accuracy and speed, of loop pre-qualification information so that they can fill customer orders as reliably, efficiently, and promptly as SBC and Ameritech. The information necessary for CLECs to assess what types of DSL service they can offer includes, but is not limited to, DLC presence, loop length, gauge, and known spectral deployment limitations. SBC and Ameritech's proposal is inadequate in several respects. In paragraph 21.a, SBC and Ameritech agree to provide loop pre-qualification based on whether the loop length is less than 12,000 feet, between 12,000 and 17,500 feet or greater than 17, 500 feet from the customer premises to the central office. These proposed break points are only good for ADSL services, and CLECs want to offer other members of the entire family of DSL services. Although these boundaries may be acceptable for copper design rules, they are not applicable for deployment of xDSL services because the reach of some xDSL technologies is less than 12,000 feet and others have a reach which exceeds 20,000 feet. Moreover, as services such as SDSL, VDSL and others are deployed, these loop length ranges will change even more.

For the qualification process, it is imperative that the CLEC have access to information about the loop characteristics, conditioning requirements and disturber identification, but nothing in the proposed conditions even remotely addresses these critical issues.

Spectrum Management. The proposed conditions completely dodge the critical issues associated with spectrum management. SBC and Ameritech should commit to: (i) allow spectrum standards and power spectral density masks to be set by an independent industry group, such as T1E1.4; (ii) allow spectrum administration and dispute resolution to be run by a neutral third party administrator; and (iii) randomly assign technologies within binder groups and not to segregate technologies within separate binder groups. If the Commission does not require SBC and Ameritech to comply with a comprehensive set of spectrum management requirements before closing, it should, at a minimum, require them to abide by any rules adopted in the pending proceeding, subject to monitoring of compliance by an independent third party.

Excessive Rates. The interim loop conditioning rates proposed by SBC and Ameritech in paragraph 24 and Attachment C are, simply put, excessive. The proposed interim \$360-\$980 rate for non-recurring line conditioning charges would protect their continued dominance of xDSL technologies. SBC and Ameritech seek to impose charges for the removal of load coils, repeaters and "excessive" bridged taps for the conditioning of loops. However, in California, SBC has conceded that the recurring costs on which Pacific Bell bases its proposed price for unbundled DSL-capable loops reflects a network design that does not include load coils, repeaters or excessive bridged taps.[1] The Michigan commission determined that Ameritech's cost-based rates should include, if they do not already, routine conditioning costs.[2] For that reason, it would be unfair and unreasonable for Pacific Bell, or any other SBC or Ameritech ILEC, to double-recover for non-recurring costs that assumes the need for conditioning the loop based on a different and inefficient network design.

Before the Commission should accept these non-recurring charges for xDSL loop conditioning, it should require SBC and Ameritech to demonstrate that they are justified under a TELRIC analysis consistent with the Commission's rules. A TELRIC cost study should show that cost-based charges would be zero because an all-copper network (under 18,000 feet) efficiently designed to provide DSL services would not include load coils, repeaters and excessive bridged taps.[3] It has been standard engineering practice for many years to design POTS loops

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[1] *In the Matter of Petition of Pacific Bell for Arbitration of an Interconnection Agreement with MFS/WorldCom Pursuant to Section 252(b) of The Telecommunications Act of 1996*. A.99-03-047 (Filed March 22, 1999) at Ex. 13, Moore Direct at 3(14)-6(2).

[2] *In the matter of the complaint of BRE Communications, L.L.C. d/b/a Phone Michigan, against Ameritech Michigan for violations of the Michigan Telecommunications Act*, Opinion and Order, at 24-25 (Michigan Public Serv. Comm'n Case No. U-11735 Feb. 9, 1999).

[3] *See, e.g.*, Hatfield Model, Version 5.0, Model Description at 17 and Inputs Portfolio at 43 (filed jointly by AT&T and MCI, Dec. 11, 1997). Loops longer than 18,000 feet should also be made available to CLECs to provide IDSL service, which can extend up to 35,000 feet.

under 18,000 feet in length so that they do not include load coils or repeaters. Therefore, there should be no need to remove any equipment on loops 17,500 feet or shorter. To the extent that SBC and Ameritech's loop plant does not conform to well-established engineering practices, SBC and Ameritech should bear the costs associated with bringing the non-standard plant to accepted design for analog POTS loops. Shifting those costs to CLECs would be inconsistent with the TELRIC methodology.

The proposed rates do not conform with TELRIC methodology in other respects. First, they do not seem to take into account the economies of (i) removing load coils or repeaters for an entire binder group of at least 25 pairs at a time (according to standard industry practice), or (ii) performing multiple types of "conditioning" on the same loop. Moreover, we have little doubt that these rates reflect the same kinds of inflated task times that have afflicted SBC and Ameritech's non-recurring cost studies, and the rates likely include unnecessary and improperly bundled costs for restoring bridged tap in a manner that is inconsistent with a forward-looking network design.

For these reasons, the conditions proposed by SBC and Ameritech should be significantly modified to facilitate, and not hamper, the deployment of xDSL services by new entrants.

VII. STRUCTURAL SEPARATION FOR ADVANCED SERVICES

MCI WorldCom agrees that the Commission should require SBC/Ameritech to provide advanced services through separate affiliates because separation can help enforcement of the unbundling, resale, and nondiscrimination requirements of section 251(c).[4] However, any such affiliate is necessarily subject to the unbundling and resale requirements of section 251(c) because it is a "successor" or "assign" of the ILEC, and a comparable carrier, within the meaning of section 251(h) and because section 10(d) expressly prohibits the Commission from forbearing from applying the requirements of section 251(c) prior to their full implementation.[5] Although the Commission has not resolved these legal issues in the pending advanced services proceeding, paragraph 28 of the proposal provides that transfer of equipment would not cause the affiliate to be deemed a successor or assign, paragraph 36 would commit the Commission to regulate the affiliate as a non-dominant carrier, and paragraph 39 terminates the separation requirement if the advanced services affiliate is deemed a successor or assign. To the extent that the proposed condition requiring a (partially) separate affiliate assumes that SBC/Ameritech can escape the requirements of section 251(c) by providing local services using advanced capabilities through an affiliate, that assumption is legally untenable. Indeed, the Commission cannot decide whether to accept this proposal until it decides in the advanced services proceeding whether it has any legal authority to deregulate such affiliates.

Separation requirements should be imposed for advanced services because separation performs a useful role even though it does not permit an ILEC to avoid its obligations under section 251(c). However, the proposed degree of separation should be increased to achieve this limited and legitimate purpose, and to maximize the independent operation of the affiliate, while

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[4]Reply Comments of MCI WorldCom, Inc., at 11-13, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* (filed Oct. 16, 1998) ("MCI WorldCom § 706 Reply Comments").

[5]Comments of MCI WorldCom, Inc., at 5-6, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* (filed Sept. 28, 1998) ("MCI WorldCom § 706 Comments").

recognizing that no wholly-owned ILEC affiliate can ever operate truly separate from the ILEC.[6] Although paragraph 27 would impose less stringent separation requirements than those contained in section 272, the Commission should require the advanced services affiliate not only to meet the requirements of section 272 but also to implement additional safeguards.[7]

At a minimum, the proposal should be strengthened or clarified in several important respects:

- SBC and Ameritech should be required to provide advanced services through affiliates that meet all of the separation requirements *before* they may complete the merger — not only in states where SBC or Ameritech already has established an advanced services affiliate (*see* paragraphs 30.b and 31.a). At a minimum, the Commission should establish strict deadlines for compliance after closing. For example, the proposal gives SBC/Ameritech an unlimited amount of time to obtain any necessary state approvals for the affiliate (paragraph 30.d). If a state commission grants such approvals promptly, all advanced services functions should be provided immediately by the affiliate, which does not need a minimum of six months from closing as paragraph 36.c allows. Similarly, SBC/Ameritech ILECs should end exclusive arrangements with affiliates as soon as an affiliate obtains state approval; they do not necessarily need six months to comply (*see* paragraph 27.c). Nor does SBC/Ameritech need a year to provide line sharing on a nondiscriminatory basis once even it agrees that it can be implemented (paragraph 33).
- The Commission should require any SBC/Ameritech ILEC to treat the advanced services affiliate on an arm's length basis and to do so from the outset.[8] For example, the ILEC should not be permitted to provide to the affiliate even temporarily any advanced services

[6]MCI WorldCom § 706 Comments at 13-14, 26.

[7]*See generally* MCI WorldCom § 706 Comments at 28-30, 41-44; MCI WorldCom § 706 Reply Comments at 40-46.

[8]*See generally* MCI WorldCom § 706 Comments at 32-41.

functionality (paragraph 27.c), to share the same space as the affiliate (paragraph 27.e), to transfer customers to the affiliate (paragraph 31.c and 3.e),[9] to allow the affiliate to use its brand name (paragraph 27.d),[10] or to transfer equipment to the affiliate (paragraph 28).[11] The ILEC and the affiliate should be required (not merely permitted) to separately own, and maintain, advanced services equipment (paragraph 27.c). The ILEC should not be permitted to market advanced services provided by the affiliate when consumers contact it with respect to non-advanced local services (paragraph 27.a). The open-ended exception permitting the ILEC to perform undefined "customer care" functions on a discriminatory basis for the affiliate (paragraph 27.a) should be eliminated.

- The Commission should specify the charges, or at least a process and schedule for establishing the charges, for services, elements, and features that the affiliate purchases from the ILEC. For example, at what rate will the affiliate compensate SBC/Ameritech ILECs for joint marketing and other functions (paragraph 27) and for use of the ILEC name on an exclusive basis (paragraph 28.d)? Another critical issue that the conditions should address the imputation rule applicable when an SBC/Ameritech ILEC performs services on behalf of the affiliate.
- The discount for unbundled loops if SBC and Ameritech do not develop necessary OSS (paragraph 35) is inadequate. This is especially true since paragraph 40.b contemplates the SBC/Ameritech may not deploy nondiscriminatory OSS for four full years after closing. Until SBC/Ameritech develops and deploys satisfactory OSS, CLECs cannot as a practical matter offer advanced services to the mass market, whether or not they get a

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[9]MCI WorldCom § 706 Comments at 34-35.

[10]MCI WorldCom § 706 Comments at 33-34.

[11]Any transfer of equipment to the affiliate, by itself, requires the affiliate to be treated as a successor of the ILEC. MCI WorldCom § 706 Comments at 45-48; MCI WorldCom § 706 Reply Comments at 46-49. The contrary provision is paragraph 28 is inconsistent with section 251(h).

discount, so OSS deployment should be made a pre-condition. If the Commission chooses not to do so, it should make the discount far greater than 25 percent to compensate CLECs for the inability to execute pre-ordering and ordering functions in a reasonable and nondiscriminatory manner consistent with the requirements of section 251(c)(3). In addition, the discount should apply to non-recurring as well as recurring charges because there is no principled basis to treat the two types of charges differently. Finally, use of loops purchased at a discount should not be limited to exclude any provision of voice grade service (paragraph 34.c).

- The provision in paragraph 34 making CLECs completely ineligible for the OSS discount for even an isolated, innocent instance of non-compliance with the limitations illustrates the one-sidedness of the proposal. If CLECs get the "death penalty" in these circumstances, so should SBC/Ameritech: any violation of the separation requirements should result in the immediate loss of the proposed exemption from section 251(c) for the affiliate, and SBC/Ameritech should then comply with the unbundling and resale requirements of section 251(c) even if provides advances services through a nominally separate affiliate.
- To accelerate competition and provide an incentive for SBC/Ameritech to provide line sharing on a nondiscriminatory basis, paragraph 33 should establish a date certain by which SBC/Ameritech must complete any actions that it contends are necessary to make line sharing technically feasible and to obtain associated equipment at commercial volumes. In fact, line sharing is technically feasible today, and any implementation problems can be addressed, if SBC and Ameritech so desire, more expeditiously. SBC/Ameritech's proposed right under paragraph 34 to provide line sharing on a discriminatory basis only to itself exacerbates the problem of SBC/Ameritech's undeserved competitive advantage — a problem that the nominal charges from one affiliate to the other do nothing to solve. Failure to provide nondiscriminatory line sharing on a timely

basis should result in the loss of any right to provide it temporarily on a discriminatory basis.

- The Commission should establish an expedited procedure to resolve any issue about SBC/Ameritech's compliance with the separation requirements, and it should define self-executing remedies for such violations, including (as explained above) loss of the purported section 251(c) exemption. CLECs should have access to information, including allegedly "proprietary" information about compliance with performance measures (paragraph 37), useful in pursuing any complaint.
- The Commission should make clear that nothing in the separation provisions affects any obligation to pay reciprocal compensation for the exchange of Internet traffic, notwithstanding any transfer of customers that are Internet service providers pursuant to paragraph 31.c or any other factor. The Commission should explain why some of the procompetitive requirements in paragraph 31 are "expressly contingent upon, the fact that the FCC has determined that Advanced Services used to provide Internet services are interstate services."
- The Commission should clarify the kinds of modifications of rules and regulations that would "materially change the substance of what is covered" in Section VII within the meaning of paragraph 39.b(2).

VIII. SHARED TRANSPORT

This proposal represents another example of a condition that does not provide any public interest benefit because SBC and Ameritech merely propose to do something that they are already required to do by law.[12] Shared transport is critical for local exchange competition.[13] Ameritech has already unconscionably refused to provide shared transport, despite the fact that state commissions, this Commission and the Eighth Circuit have all found that Ameritech must provide shared transport to CLECs.[14] SBC and Ameritech should not be rewarded with merger approval for compliance with existing legal obligations.

In light of Ameritech's abysmal history, the shared transport condition should be strengthened in several important respects:

- Paragraph 42 should not give Ameritech yet another year to offer shared transport.

Ameritech does not need more time to provide a UNE that it has already refused to

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[12]The proposal in fact offers nothing more than what Ameritech offered in its section 271 application for Michigan two years ago in 1997. Despite the Commission's denial of that application, Ameritech apparently has done nothing in the last two plus years to address shared transport, a critical element needed for opening local markets to competition. *See* Affidavit of Daniel J. Kocher on Behalf of Ameritech Michigan In the Matter of Application of Ameritech Michigan Pursuant to § 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137 at ¶¶ 67 -78 (Ameritech will offer shared transport only according to billing settlement procedure to include specifically blended rates, true-up provisions, and netting of access).

[13]*See* Comments of MCI WorldCom, Inc., at 62-67, *In the Matter of Implementation of the Local Competition Provisions in the Telecommmunications Act of 1996* (CC Docket 96-98) and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service* (CC Docket 95-185) (filed May 26, 1999).

[14] *See In the matter, on the Commission's own motion, to consider the total service long run incremental costs and to determine the prices of unbundled network elements, interconnection services, resold services, and basic local exchange services for Ameritech Michigan,* Case No. U-11280, 1998 Mich. PSC LEXIS 46, 183 P.U.R.4th 1 (Mich. Pub. Serv. Comm'n Jan. 28, 1998); *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Order on Reconsideration and Further Notice of Proposed Rulemaking, 12 F.C.C.R. 12460 (1997); *Iowa Utilities Board v. FCC* , 120 F.3d 753 (8th Cir. 1997), cert. granted, 118 § Ct. 879 (1998).

provide for too long. Nor does Ameritech need a year to provide shared transport on the same terms (except pricing) as its merger partner when SBC already offers shared transport in Texas.   Given these facts, Ameritech can and should provide shared transport prior to merger close so that CLECs can finally start receiving shared transport in the Ameritech region without any additional delay.

- Paragraph 41.b should not allow for a netting or collection of access by SBC/Ameritech where an end-user customer is served by a CLEC. Once a CLEC buys any UNE, including but not limited to shared transport, the CLEC and not the ILEC has the exclusive right to provide service using that element. If, for example, the CLEC is using shared transport to provide switched access, SBC/Ameritech is no longer providing the access and should not have direct contact with the interexchange carrier to net access. The interexchange carrier is the customer of the CLEC, and the CLEC, as the provider of the switched access service, should collect the associated access charges.
- Paragraph 41.c allows for a blending of shared and direct transport. SBC and Ameritech should explain, however, exactly how they will develop the shared transport rate. The current language is at best unclear. SBC/Ameritech should not include the rates for direct transport when they calculate the rates for shared transport; otherwise, double charges to the CLECs would result. The charge for shared transport should be the TELRIC cost of that facility.
- While paragraph 41.a requires Ameritech to withdraw its proposal at the Commission to establish a separate transit service rate, the condition must specifically require Ameritech to withdraw the proposal "with prejudice". This ensures that SBC/Ameritech will not simply refile this proposal at a later time.

IX. OFFERING OF UNEs

This proposed condition, by its terms, does not improve the status quo. It simply provides that SBC and Ameritech will continue to abide by their prior commitments to provide UNEs during the pendency of the remand from the Supreme Court.[15] Equally important, the condition does not provide any specific consequences for non-compliance, or even establish a procedure for the Commission to enforce this condition.

A condition addressing the offering of UNEs would provide tangible benefits if SBC and Ameritech committed to provide specified UNEs (for example, unbundled loops and access to directory assistance information on a bulk basis), and combinations of UNEs, regardless of the outcome of the pending UNE remand proceeding. Another useful provision would be to ensure that CLECs that purchase UNEs from SBC/Ameritech obtain the same intellectual property rights that SBC/Ameritech has to these network elements.[16] The Commission could also require SBC and Ameritech to honor existing unbundling requirements established by state commissions (but not the Commission) — an issue that the letters in Attachment D do not address. But the proposed condition, which contains no new or different requirement, does nothing to offset the reduction in local competition that approval of the merger would cause.

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[15]It is not clear how categorical are SBC's and Ameritech's commitments in the letters in Attachment D to abide by existing agreements. In these letters, SBC and Ameritech reserve the right to withhold UNEs if CLECs seek to change the status quo in unspecified ways.

[16]The issue is the subject of a pending Commission proceeding, *Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right to Use Agreements Before Purchasing Unbundled Elements*, CC Docket No. 96-98, CCB Pol.

X. COMPLIANCE WITH COMMISSION PRICING RULES

This proposed condition does nothing to increase the likelihood that, after almost three years of steadfast resistance to cost-based pricing, SBC and Ameritech will finally start to charge cost-based rates that comply with the Commission's rules and with the rules of the large majority of state commissions that adopted similar principles while the Commission's pricing rules were stayed by the Eighth Circuit. The Chief of the Common Carrier Bureau, and indeed the Commission itself, already have the ability to discuss with any ILEC, including SBC and Ameritech, any concerns about compliance with the Commission's pricing rules. The Commission can itself enforce those rules directly through section 208 complaint proceedings, and it can participate directly in state commission proceedings. Indeed, this proposed condition could *limit* the Commission staff's role by making SBC/Ameritech the staff's representative in state commission proceedings. If the staff has concerns that should be communicated to a state commission, one would surely expect the staff to communicate those concerns directly, and not to rely on the party whose conduct gave rise to those concerns.

Paragraph 44 would give the Bureau Chief the right to get documentation from SBC/Ameritech addressing these concerns. But it is unlikely that SBC/Ameritech would ignore a request for documentation from the Bureau Chief without this condition, and SBC/Ameritech could easily comply simply by providing the same materials that it submits in state commission proceedings that are likely to be underway addressing the same pricing issues.

A condition that would help to achieve compliance with the Commission's pricing rules would be very different. For example, such a condition would include SBC/Ameritech's agreement that the Commission itself would adjudicate complaints about violations of its own rules on a strict timetable under the Commission's expedited procedures. The condition would require SBC/Ameritech to comply with the Commission's geographic de-averaging rules and not to advocate any changes of those rules in state commission proceedings. Another option would be for the Commission to impose caps on the prices of specific recurring and non-recurring charges for UNEs, and to prohibit "glue charges" for combinations of UNEs.[17] The elimination of benchmarks caused by the merger could lead the Commission to adopt the "best practices" of any current SBC or Ameritech ILEC, and in the case of pricing, that means that any SBC or Ameritech ILEC should charge a price no higher than the lowest price for a geographic zone charged by any other SBC or Ameritech ILEC. If one SBC or Ameritech ILEC can efficiently provide a UNE at that price, so should other SBC and Ameritech ILECs.

The condition proposed by SBC and Ameritech, however, is purely cosmetic. It would not produce any improvement in the excessive prices now demanded by SBC and Ameritech. MCI WorldCom agrees that it is crucial for the Commission to address the pricing issue because non-cost-based prices will cripple local competition, no matter how efficiently and smoothly OSS works. The proposed condition is no better than no condition at all.

XI. CARRIER-TO-CARRIER PROMOTIONS

The carrier-to-carrier promotions offered by SBC and Ameritech are yet another example of the "smoke and mirrors" approach they used in devising the proposed conditions. Essentially, the "promotions" boil down to this — the monopolist determines what services CLECs can sell (by prohibiting use of discounted loops for advanced services) and how much of those services CLECs can sell (by limiting the number of customers for which the promotional rates are available and the duration of the promotion). For numerous reasons, these proposed promotions would not substantially expand the ability of CLECs to compete against SBC and Ameritech:

- The low caps and restrictions associated with the promotions render any benefits insignificant. Paragraphs 46.g and 49 would allow CLECs to compete (for a limited and uncertain time) for only a small portion of the market using the promotional rate for unbundled local loops, the UNE platform, and resold services. These caps will likely be

[17] For example, SBC is now attempting in Oklahoma, Kansas, Missouri, and Arkansas to charge a grossly inflated price for directory assistance despite a requirement that it charge cost-based, nondiscriminatory prices and the Texas commission's finding that the proper rate is a fraction of the price that SBC is charging MCI WorldCom in the other SWBT states.

met well before the three-year term of the promotional period. So, in effect, the more effective the discount in achieving its purposes, the sooner CLECs lose it, and the harder CLECs compete for market share, the fewer opportunities they have for capturing market share using the promotional rate.

- The promotional discount for unbundled loops in paragraph 46.d would apply only to recurring charges. But SBC and Ameritech offer no basis to treat non-recurring charges differently, and the excessive level of non-recurring charges could effectively moot a CLEC's ability to take advantage of the promotional rates. Bear in mind more generally that the discount may be calculated from rates that CLECs have challenged as grossly excessive and that may not even have been finally determined to be consistent with TELRIC methodology.
- The promotional discount for unbundled loops will be available for too short and too uncertain a period. Paragraph 46.d allows SBC/Ameritech to stop the "promotion" as soon as it gets section 271 authority in a state or as soon as it provides facilities-based service to only *one* customer in only 15 out-of-region markets. As a result, CLECs cannot make reliable business plans based on the availability of a discount which may be withdrawn at any time.
- SBC/Ameritech should not limit CLECs' ability to use unbundled loops purchased at the promotional rate to provide advanced services. The only effect of this unjustified restriction is to retard deployment of advanced services.
- The discount for UNE platforms should not be left to negotiation and arbitration, as paragraph 48.c provides. SBC/Ameritech's only incentive is to use negotiations to delay the start of arbitration, and arbitration of pricing issues has proven to be a protracted process which ILECs use all of their opportunities to drag out and to increase the costs to CLECs of participation. Once again, the terms of this condition should be established before SBC and Ameritech transfer control of any license.

- Similarly, the ability to utilize the small number of unbundled loops offered at the discounted promotional rate is limited by the lack of any discount for collocation — and the failure discussed above to ensure that SBC/Ameritech comply with the Commission's existing collocation rules.
- SBC and Ameritech should not have flexibility to manipulate the availability of the discount for unbundled loops to particular lines, as paragraph 46.d would permit. SBC and Ameritech would doubtless act on their incentive to use this discretion to make the discount available where it is least likely to be used, and to deny it where it would have the most impact on competition.
- The timing of the promotion obligation makes it even less useful. CLECs have access to the discounted rate for three years, but SBC/Ameritech may not implement uniform and nondiscriminatory OSS for unbundled loops, combinations of UNEs, or resold services during that entire period, rendering the theoretical availability of the discount largely meaningless for mass market services.
- SBC and Ameritech make no claim, much less a showing, that the 32-percent discount for resold services will make resale a viable competitive option. Interestingly, this discounted rate is less than the rate offered to the CLEC that Ameritech touted as the poster child demonstrating the reasonableness of its resale rates: Chicago-based USN Communications, Inc., negotiated a 35-percent discount with Ameritech but was forced in 1998 to file for bankruptcy and to abandon its "total service resale" strategy.[18]
- The one-sidedness of the proposal is demonstrated by the power to deny a CLEC eligibility for the discount even for an unintentional or isolated violation of the strict eligibility limits. Yet while SBC and Ameritech are careful to put strict limits on consequences to them for their violations of the conditions that they formulated, any

[18] *See* Erik Heinicke, *Troubles at USN Call into Question Viability of Local Resale at Current Discount Rates*, Telecommunications Reports, Sept. 14, 1998. *See also* Jon Van, *Ameritech's Resale Poster Child Hits a Major Speed Bump*, Chicago Tribune, Nov. 5, 1998.

CLEC is punished by complete and immediate loss of rights for any mistake, no matter how insubstantial or inadvertent. Similarly, SBC and Ameritech grant themselves the right to audit compliance by CLECs (paragraph 48.d), but it is easy to predict their reaction if CLECs claimed the right to audit SBC/Ameritech's performance. Compliance provisions should be reciprocal.

In the end, what SBC and Ameritech leave out of their proposed conditions is as important as what they include, and the missing elements effectively strip them of any practical utility.

XII. ALTERNATIVE DISPUTE RESOLUTION

MCI WorldCom does not object to giving CLECs the option to invoke the alternative dispute resolution procedure described in paragraph 50 and Attachment E. However, MCI WorldCom does not believe that this process offers sufficient net benefits over existing options that it is likely to be used very often or productively.

XIII. MOST-FAVORED-NATION PROVISIONS

MCI WorldCom strongly supports the basic principles embodied in paragraphs 51 and 52. Until now, SBC and Ameritech have steadfastly resisted this principle, thereby setting back the development of local competition. However, some of the proposed restrictions would mean that CLECs will still encounter delay when trying to invoke these provisions. In practice, requesting most-favored-nation treatment will simply start a lengthy negotiation process in which SBC and Ameritech would claim that it is not feasible to provide the requested interconnection arrangement or UNE because of state-specific issues or because it would somehow be inconsistent with state-specific policies. And of course, state-by-state negotiation of pricing would compound the difficulty of translating the principle into a working arrangement.

XIV. REGIONAL INTERCONNECTION AND RESALE AGREEMENTS

Here again, MCI WorldCom strongly supports the principle embodied in paragraph 53 — a principle that SBC and Ameritech have resisted despite repeated requests by MCI WorldCom for region-wide agreements. And here again, turning this principle into region-wide agreements is bound to be a costly, frustrating, and protracted process because SBC/Ameritech will continue to have the same incentive to resist such agreements.

XV. ADDITIONAL SERVICE QUALITY REPORTING

The service quality reporting conditions is another set of requirements that is unobjectionable but adds little of value. SBC and Ameritech should not wait for six months after the merger close to being to file the proposed reports. Indeed, they already have the ability to provide, and in some instances do provide, much of the information covered by the proposed reports. The reporting should also include the quality of access services used to provide local services. *See* page 24 above.

XVI. NRIC PARTICIPATION

MCI WorldCom agrees that SBC/Ameritech should continue to participate in the Network Reliability and Interoperability Counsel ("NRIC"). However, this requirement does little good because the real question is not *whether* SBC/Ameritech participate, but *how* it participates and *whether* it implements NRIC recommendations promptly and completely. It is not practical for the Commission to police SBC/Ameritech's day-to-day participation in NRIC and to ensure that SBC/Ameritech's participation is constructive and reasonable. The Commission can and should require all SBC/Ameritech ILECs to speak with one voice and cast one vote, and the former SBC and Ameritech ILECs should not espouse different positions.

XVII. ARMIS REPORTING

MCI WorldCom has no comment concerning this proposed condition.

XVIII. ACCESS TO CABLING IN CERTAIN PREMISES

SBC and Ameritech should not merely conduct a cabling trial but should provide, on a permanent basis, nondiscriminatory access to cabling within MDUs and MTUs where they control the cables, and SBC and Ameritech should comply with this requirement before they close.

Despite the fact that the campus and riser cable should considered part of the loop,[19] it is no secret that CLECs face significant challenges in gaining access to wiring in buildings for the provision of services. SBC and Ameritech should already be cooperating with CLECs with these matters and installing wiring in a way that permits CLECs a single point of interface. It should not take SBC and Ameritech 6-12 months to begin trials that last for a year (paragraph 57.e). There are no technical feasibility issues associated with reconfiguration and access to wiring that cannot be easily and quickly resolved with good-faith ILEC cooperation. Nor is there any justification for the three-year limit in paragraph 58, which creates uncertainty that deters CLECs from providing service to MDUs and MTUs pursuant to the rights provisionally granted by this condition.

In addition, the condition should not provide for CLECs to pay "actual costs" instead of TELRIC rates for recabling and reconfiguration of the wiring. SBC and Ameritech should also be responsible maintaining the wiring at no additional fee to CLECs.

XIX. INTERLATA PRICING

MCI WorldCom has no comment concerning this proposed condition, except (as noted above) the fact that inflated access charges are not a real cost to SBC/Ameritech when it originates or terminates interLATA calls in-region makes it easier for SBC/Ameritech than for unaffiliated interexchange carriers not to impose minimum monthly or flat-rate charges.

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[19] *See* Comments of MCI WorldCom, Inc., at 46-47, *In the Matter of Implementation of the Local Competition Provisions in the Telecommmunications Act of 1996* (CC Docket 96-98) and *Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service* (CC Docket 95-185) (filed May 26, 1999).

XX. ENHANCED LIFELINE SERVICES

MCI WorldCom has no comment concerning this proposed condition.

XXI. OUT-OF-REGION LOCAL SERVICES

The Commission staff has proposed a set of conditions that purport to establish some minimum substantive and timing requirements for SBC/Ameritech's entry into local markets outside its region. The fact that the staff concluded that these conditions are necessary is itself highly significant. The staff correctly recognized that SBC/Ameritech's incentive to carry out its so-called "National Local" strategy is suspect. The merger offers no significant public interest benefits unless it produces far more out-of-region competition than SBC or Ameritech individually would initiate without the merger. But the Commission can have no confidence that the merger will have this result. If marketplace conditions do not create adequate incentives for a company to make the substantial investments necessary to be a competitive facilities-based local exchange carrier, the Commission cannot supply these incentives through a regulatory set of conditions.

However, the conditions proposed by SBC and Ameritech would not generate any significant benefit. What is most striking is how minimal they are. Indeed, it is not at all surprising that these conditions are acceptable to SBC and Ameritech because they are so easy to meet. For example, despite the fact that SBC and Ameritech have been planning their "National Local" strategy for over a year since the merger was announced, paragraph 61.b(3) would give SBC/Ameritech a *minimum* of 2½ years to complete initial deployment of local services in all 30 out-of-region markets, and it could be longer if SBC/Ameritech continues to delay compliance with section 271. SBC/Ameritech would satisfy this leisurely requirement by installing one switch and offering service to *one* business and *one* residential customer. Notably, the proposed condition does not require any deployment of transmission facilities, perhaps the most expensive part of facilities-based entry. Then SBC/Ameritech would have another year to collocate in only 10 wire centers (paragraph 61.c(3)) and to offer local service to a group of business and residential customers. The proposed offering requirement is meaningless because it does not specify the terms of the offer; for example, SBC/Ameritech could charge more for local service than the ILEC and apparently satisfy this requirement. Nor does this condition require SBC/Ameritech to continue to offer local services for any significant period of time. Starting with only a fraction of SBC's and Ameritech's experience in providing local service, and enjoying none of SBC's and Ameritech's monopoly profits, several CLECs have moved far more quickly than SBC/Ameritech plans to act to satisfy this condition.

Although the weakness of the underlying conditions makes the lack of self-executing remedies relatively unimportant, it is worth noting that the cap on payments for non-compliance with these already meager provisions limits the price that SBC/Ameritech must pay to renege on its much-touted out-of-region entry promises.

XXII. VERIFICATION OF COMPLIANCE

MCI WorldCom has no objection to the proposed compliance program — and no illusions that it will make a difference. The existence of such a program will not significantly increase the likelihood that SBC/Ameritech will comply with the proposed merger conditions.

Several changes, however, can and should be made to improve the audit process:

- SBC/Ameritech's authority to select the auditor should be circumscribed. The same problems arises here as with the collocation audit (as explained above): a company that had a substantial role in designing key systems and processes under review cannot be considered "independent," even if it was not "instrumental" in designing "substantially all" these systems and processes.
- The auditor should have an obligation, not an option, to notify the Audit Staff if access is not timely provided pursuant to paragraph 62.d(3). The auditor should also be required to discuss SBC/Ameritech's compliance with wholesale customers. *See* page 26 above.
- The Commission should establish a procedure for a party that disagrees with the auditor's findings to submit its objections and for the Commission to adjudicate the issues on an expeditious basis. Paragraph 62 should specify the terms and conditions on which interested parties may get access to the working papers and supporting materials of the

auditor, subject to appropriate confidentiality protections. The SBC/Ameritech proposed compliance plan and preliminary audit requirements do not appear to warrant "confidential treatment" under paragraph 62.b and 62.d(1).

- Failure to comply with the verification provisions should trigger the imposition of specified sanctions.
- Compliance and audit reports should be prepared more frequently than annually because problems can arise more often and any problems need to be addressed immediately. In practical effect, an annual audit means that any violation may well go undetected and uncorrected for much longer over two years because SBC/Ameritech has nine months after the year covered by the audit to submit the final audit report (paragraph 62.d(5)), and only then will any significant scrutiny of the findings begin.

XXIII. ENFORCEMENT

MCI WorldCom wholeheartedly endorses the principle in paragraph 63 that "[t]he specific enforcement mechanisms established by these Conditions do not abrogate, supersede, limit, or otherwise replace the Commission's enforcement powers under the Communications Act." However, the Commission should spell out more clearly what that principle means, especially in light of Bell Atlantic's position that the Commission has no jurisdiction to enforce the conditions imposed in connection with the Bell Atlantic-NYNEX merger. The conditions should therefore include an express acknowledgment by SBC and Ameritech that the Commission has authority and jurisdiction to enforce these merger conditions. The Commission should also explicitly confirm that these conditions do not affect its authority, and its obligation, to adjudicate complaints pursuant to section 208 of the Communications Act. For example, SBC/Ameritech's failure to comply with the Commission's collocation, UNE, or pricing rules under the proposed merger condition would not prevent any victim of this violation of the Commission's rules and sections 251(c) or 252(d) of the Act to file a complaint pursuant to section 208.

The conditions should also make clear that they do not limit or affect the authority of state commissions to adjudicate disputes about SBC/Ameritech's compliance with federal or state legal requirements that state commissions have jurisdiction to enforce. Here again, the lack of substance in the proposed conditions concerning collocation, UNEs, and pricing illustrates the need to preserve the authority of those state commissions that have been pushing ILECs to live up to their obligations under the Act and the Commission's regulations. The continuing role of state commissions in moving SBC and Ameritech toward reasonable, efficient, and nondiscriminatory OSS needs to be recognized. Conversely, CLECs should have the option to pursue remedies with either this Commission or state commissions.

The enforcement section should also provide for payments for violation of those conditions for which no specific non-compliance payment is provided. SBC and Ameritech profess to agree to conditions that are "self-executing,"[20] and failure to comply with any condition ought to have automatic and immediate consequences. Furthermore, to increase both the deterrent and compensatory function of the conditions, SBC/Ameritech should pay the attorneys' fees and other costs (including expert witness fees) incurred by their opponents in any enforcement proceeding where their opponents substantially prevail.

Paragraph 64 permits the Commission, "at its discretion," to extend the effective period of a condition for a period that does not exceed any period of non-compliance. However, any condition with which SBC/Ameritech does not comply should be automatically extended for the period of non-compliance. Such an extension should not be optional at the Commission's discretion; it should be mandatory. At the very least, the Commission should adopt a very strong presumption that any condition shall be extended for the period of non-compliance except in extraordinary circumstances.

Finally, and at least equally important, the modification provision in paragraph 67 should be changed substantially. First, the standard for a waiver of the deadlines imposed on SBC/Ameritech should be spelled out: no extension of these deadlines waiver should be granted except for an extraordinary change in circumstances. SBC/Ameritech should bear a heavy burden

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[20]SBC-Ameritech *Ex Parte* Letter, at 2 (July 1, 1999).

if it seeks an extension of any deadline. Otherwise, these deadlines will be gutted, CLECs will not be able to rely on them in their business planning, and the Commission will be inundated with waiver requests. For example, as paragraph 61.e and 65 provide in limited circumstances, other deadlines should be extended only if SBC/Ameritech demonstrates that compliance was rendered impossible or infeasible by a force majeure event or Act of God.

Second, any modification authority should work both ways: if the Commission has authority to grant modifications sought by SBC/Ameritech, it should have authority to grant modifications sought by the intended beneficiaries of the conditions if they do achieve their intended result in their initial form. The broader the Commission's authority to make modifications requested by SBC/Ameritech, the broader its authority to make procompetitive modifications consistent with the original purpose of the conditions.

XXIV. SUNSET PROVISIONS

There should be no automatic sunset of any of the conditions. Whether the conditions continue to fulfill their original purpose or have outlived their usefulness cannot sensibly be decided at this time. The result of any such approach will inevitably be that the conditions will end too early or too late. The Commission should periodically make a case-by-case determination based on competitive conditions in the local marketplace as it evolves. The Commission should review the continuing need for the conditions three years after any closing and every two years thereafter, consistent with the biennial review requirement of section 11(a) of the Communications Act, 47 U.S.C. § 161(a). Because the conditions are critical to the development of local competition in SBC and Ameritech's regions, the burden in these periodic review proceedings should be on SBC/Ameritech to prove that the conditions are no longer useful.

If the Commission (in our view, mistakenly) decides to adopt an arbitrary sunset date, it should, at a minimum, make four important changes:

- First, the term of any condition with which SBC/Ameritech is not required to comply before closing should begin when SBC/Ameritech first achieves compliance. If it takes SBC/Ameritech one or two or even three years to achieve compliance, SBC/Ameritech should be required to comply with the condition for a minimum period thereafter; otherwise, the eventual compliance with be of little or no benefit to the intended beneficiaries of the condition, and SBC/Ameritech will in effect be rewarded for their delay in compliance.

- Second, any fixed term should be longer than three years. Two years after the Commission imposed conditions on the Bell Atlantic/NYNEX merger, Bell Atlantic is still out of compliance.
- Third, the Commission should retain the authority to extend any condition if the circumstances that initially justified the condition continue to exist. Its authority to extend the conditions should not be limited SBC/Ameritech's failure to comply with the conditions, as paragraph 68 currently provides.
- Fourth, for the reasons explained on pages 62-63 above, any condition with which SBC/Ameritech does not comply should be automatically extended for the period of non-compliance.

XXV. EFFECT OF THE CONDITIONS

As currently drafted, paragraph 69 is unclear and could be abused by SBC/Ameritech to evade procompetitive conditions imposed by the Commission. At a minimum, the Commission should more clearly define when a merger condition imposed by it is "substantially related" to a merger condition imposed under state law. SBC/Ameritech should not have an open-ended, unilateral ability to avoid a merger condition simply because CLECs have somehow invoked rights under state law. In general, unless federal and state merger-related provisions are inconsistent, SBC/Ameritech can and should comply with both. It should be up to the CLEC to decide whether to invoke the federal or the state provision.

Paragraph 70 would unjustifiably circumscribe the Commission's public interest review under section 271(d)(3)(C). Especially since many of the proposed conditions do not go significantly beyond SBC/Ameritech's obligations under section 251(c) and the competitive checklist in section 271(c), the Commission should at least have the discretion to consider their possible expiration, and the likelihood that SBC/Ameritech will withdraw offerings that have proven their procompetitive value. The continuing role of the conditions is directly and substantially relevant to whether SBC/Ameritech's entry into the in-region interLATA market would be in the public interest. SBC/Ameritech cannot have it both ways: SBC and Ameritech will surely want the Commission to consider these conditions in deciding whether to grant a section 271 application, and so they cannot reasonably object to Commission consideration of the expiration of the conditions. To the extent the conditions' presence has a positive effect on the development of local competition, their absence will have a negative effect that the Commission is duty-bound to consider as part of its public interest analysis.

CONCLUSION

No set of conditions can adequately offset the substantial harms to the public interest that the merger of SBC and Ameritech would cause. If the Commission nevertheless decides to grant conditional approval to the merger, it should substantially strengthen the conditions proposed by SBC and Ameritech as explained in these comments.

Respectfully submitted,

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